

INDIANA DEPARTMENT OF CHILD SERVICES ADMINISTRATIVE POLICIES AND PROCEDURES		
Policy Number: GA-7	Effective Date: April 1, 2008	Version: 1.0
<b>POLICY TITLE: E-MAIL RETENTION</b>		
<b>OVERVIEW:</b> All e-mails sent or received on government computers and other devices are owned by the State of Indiana and may be public records as defined by the Access of Public Records Act. The content of the e-mail is the determining factor establishing the document's retention or destruction per the DCS Records and Retention Schedule (RRS). DCS e-mails, which are not considered transitory, will be retained pursuant to Indiana law. Transitory e-mails may be deleted from the state system by Office of Inspector General (OIG) employees.		

## I. DEFINITIONS

- A. Transitory messages: Messages that do not: a) set policy, b) establish guidelines or procedures, c) certify a transaction, or d) become a receipt. Transitory documents serve to convey information of temporary importance.
- B. Duplicate records: Messages sent to multiple people within State government. Information that is transmitted in this manner is considered a duplicate record. If retention is required of the original, the sender has the obligation to retain the e-mail in accordance with the appropriate retention schedule.
- C. Retention requirements: A term used to refer to the rules set by the Indiana Oversight Committee on Public Records regarding the length of time different types of public records must be stored before they can be discarded.

## II. REFERENCES

- A. [IC 5-14-3: Access to Public Records](#)
- B. [IC 5-15-5.1: State Commission on Public Records](#)
- C. [60 IAC 2: Microfilming Standards for Source Documents with a Retention Period of more than Fifteen \(15\) Years](#)
- D. [HR-3-7 Use of State Time and Equipment](#)

## III. POLICY

E-mails can be categorized into three broad categories:

- A. Transitory and Duplicate messages, including copies of e-mails sent to several people, as well as casual routine or personal communications – *No retention requirement*. Most e-mails are transitory. These e-mails may be deleted immediately. The following types of transitory e-mail can be deleted unless additional substantive (i.e. non-transitory) information is included in the correspondence:
  - 1. Incoming list serve messages;
  - 2. Personal e-mails;
  - 3. Spam;
  - 4. Non-policy agency announcements;
  - 5. Telephone messages;
  - 6. Published reference materials;
  - 7. Invitations to meetings and replies;
  - 8. Thank yous;
  - 9. Replies to routine questions; and

10. Out of office auto-replies.

Examples of e-mail message categories requiring some level of retention include the following:

1. Containing information developed in preparing position papers, reports and studies;
  2. Reflecting official actions taken in the course of conducting agency business;
  3. Conveying information on agency programs, policy decisions, and essential transactions;
  4. Conveying statements of policy or the rationale for official decisions or actions;
  5. Documenting oral exchanges, such as meetings or telephone conversations, during which policy was discussed or formulated;
  6. E-mail calendars reflecting the daily appointments of officials conducting state business; and
  7. Distribution lists for state business mail.
- B. Public records with a less than permanent retention period – Follow retention period for equivalent hard copy records as specified in an approved retention schedule. The record must be in hard copy or electronic format, which can be retrieved and interpreted for the legal retention period. When there is a doubt about the ability to retrieve an electronic record over the retention period of that record, the record may be printed out. Agencies may delete or destroy records only after receiving signed approval from the Commission on Public Records via the [Records Destruction Notification \(SF 16\)](#).
- C. Public records with a permanent or permanent or archival retention period – Retention may be in the form of a hard-copy printout or microfilm that meets [60 IAC 2](#). The information must be legible without interpretation. Questions concerning microfilm should be addressed to the Commission on Public Records, Micrographics Division.

#### IV. PROCEDURE

- A. E-mail that qualifies as a retainable record under [IC 5-15-5.1](#) must be retained in accordance with the applicable record retention schedule that has been approved by the Indiana Commission on Public Records (ICPR). The content of the e-mail will determine which record retention schedule applies. Each employee is exclusively responsible for managing all the e-mail they send and receive; managing those e-mail means that each employee must sort, file, retrieve, and archive or delete the e-mail in accordance with these procedures.
1. **Sorting** – Sorting involves promptly deleting e-mail when allowed by [IC 5-15](#) and the applicable record retention schedule. Sorting also involves routinely filing e-mail that must be retained for the applicable retention period. To avoid wasting computer storage space, e-mail should be deleted promptly if it is not a record under [IC 5-15](#) and if it has no further value.
  2. **Filing** – Filing an e-mail for short-term storage involves moving the e-mail into folders created within e-mail software. For e-mails that must be retained for longer timeframes, it may also mean printing and filing hard copies of e-mail in a paper file or converting the e-mail into another software format for long-term

electronic filing.

**Note:** When filing e-mail that qualifies for confidential treatment, create a confidential folder and place it within the project folder in order to have a place for the confidential e-mail that relates to that project.

3. **Retrieving** – Retrieving an e-mail means that, upon request, employees must promptly retrieve e-mail for which they are exclusively responsible (that is, sent or received from outside DCS). E-mail that is retrieved must include the transmission properties of the e-mail. Upon receipt of a public records request or discovery request, the DCS employee responsible for the requested e-mail must find and retrieve it in a timely manner just as he or she must be able to quickly retrieve and produce paper documents in his or her possession or control. DCS will develop its own specific system for uniform file-folder creation and filing. This system should be based on, or consistent with, the area's paper filing system. Each area should also develop a system for how and when to convert e-mail to paper or microfiche for long-term storage. This long-term storage may be required based on applicable record retention schedules. These DCS procedures will allow staff to more easily locate and retrieve e-mail.
4. **Archiving or deleting** – filed e-mail must be done according to a record retention schedule approved by the ICPR. Archiving for the purposes of [IC 5-15-5.1](#) involves the long-term storage of a record, including e-mail, according to the applicable retention schedule. ICPR requires all long-term archiving of records to be done in paper, microfilm or microfiche format. Currently, records cannot be archived on electronic media. As always, the transmission properties of the e-mail are considered part of the e-mail and must be archived with the e-mail.
  - a. The content of the e-mail determines the applicable retention schedule. Record retention schedules are maintained by each agency for agency specific records and approved through the ICPR process as well as the General Retention Schedule, which applies to all agencies.
  - b. To avoid wasting computer storage space, e-mail should be deleted or archived promptly when authorized by the applicable retention schedule. However, records relevant to pending or reasonably anticipated litigation must be preserved even if a record retention schedule allows for its destruction. Such records will be subject to a litigation hold by the General Counsel.<sup>1</sup>

B. Managing e-mail when employees leave:

1. Each employee is responsible for organizing, filing and archiving e-mail before leaving his or her position at DCS.
2. Supervisors are responsible for ensuring that their staff completes the final organization of e-mail before leaving. Supervisors are also responsible for managing, filing, retrieving and archiving the e-mail of their former staff.

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<sup>1</sup> Even if a record retention schedule provides for the destruction or alteration of a record (including an e-mail), if that record is relevant to "pending" or reasonably anticipated litigation it must be preserved as potential evidence in that litigation. Such records will be subject to a "litigation hold" by DCS's General Counsel or the Attorney General's office. If you believe a record is relevant to pending or anticipated litigation, check with DCS's legal counsel before destroying the record.

C. Exceptions to Public Records Requirements and Confidential E-mails - Every e-mail written or received during the course of your work as a public employee is considered a “public record” by Indiana’s Access to Public Records Act. This means the public has a right to inspect and copy every e-mail that a public employee writes or receives as part of his or her job unless the e-mail fits a specific exception to public disclosure. The DCS General Counsel responds to all public records requests.

1. Exception to public disclosure requirements - The Public Records Act specifically lists 33 types of records that may be kept confidential by a public agency.
2. Confidential e-mail – Every effort should be made to protect confidential information from disclosure. Questions about an e-mail and its “confidential status” should be directed to the DCS General Counsel (personal e-mails are not confidential). E-mail that is intentionally or accidentally forwarded to someone outside of DCS can lose its legal privilege. To ensure confidential information is properly protected, employees should do the following before including confidential information in an e-mail:
  - a. Clearly label the e-mail as confidential, and warn the recipient not to forward the e-mail to anyone who is not authorized to receive it. Labeling the subject line of the e-mail as confidential in **bold face type** will make the confidentiality claim apparent when the e-mail is still in the recipient’s inbox. This, in turn, will make it less likely that the recipient will accidentally forward the confidential e-mail to someone who is not authorized to see it.
  - b. Create a signature block that claims the e-mail as confidential.
  - c. Name the exception(s) to disclosure you are relying upon for the claim of confidentiality, including the statutory citation.
  - d. Be aware that public employees who intentionally or knowingly disclosure information that is classified as confidential commits a Class A misdemeanor. In addition, an employee who recklessly discloses or fails to protect confidential information may be disciplined under personnel policies. See [IC 5-14-3-10](#).
  - e. Be aware that e-mail may be inadvertently transmitted to parties outside DCS, which can waive any claim of privilege.
  - f. Be aware when sending extremely sensitive information, such as a company’s trade secret, that it is possible for e-mail transmitted over the Internet to be intercepted and copied.
  - g. Confirm whether a more secure form of communication is available or appropriate.

D. Permissible use of state resources

1. [40 IAC 2-1-9](#) states, “A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.”
2. DCS has adopted [HR-3-7 Use of State Time and Equipment](#) to guide employees.

**V. FORMS AND OTHER DOCUMENTS**

[Records Destruction Notification \(SF 16\)](#)

DATE: 03/13/08

James W. Payne, Director

Department of Child Services

A signed copy is on file.